

Remarks

Status of the Claims

Claims 19-36 were pending in the application. All claims stand rejected. By this paper, claims 19-34 and 36 have been amended, claim 35 has been canceled without prejudice or disclaimer, and claims 37-40 have been added. For the reasons set forth below, Applicants submit that each of the pending claims is patentably distinct from the cited prior art and in condition for allowance. Reconsideration of the claims is therefore respectfully requested.

Claim Rejections – 35 U.S.C. § 101

Claims 35 and 36 stand rejected under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter. Claim 35 has been canceled without prejudice or disclaimer, mooted the rejection of this claim.

Page 2 of the Office Action asserts that a “computer readable storage means” could somehow be broadly interpreted as a signal. Applicants respectfully disagree. A person of ordinary skill in the art would recognize that the term **storage** makes it clear that the claim requires an article of manufacture that is capable of actually storing a computer program that can be read and executed by a computer. Nevertheless, to expeditiously further prosecution, Applicants have amended claim 36 according to the Examiner’s suggestion. See, page 2 of the Office Action (stating that “[t]here must be a computer-readable medium to realize the computer program’s functionality”). Applicants respectfully submit that the originally filed claims and specification imply such a computer-readable medium. See, *e.g.*, page 7, lines 21-29 of the specification

(stating that a computer readable storage means **stores thereon** a computer program product that can be executed on a computer, digital processor or the like). Applicants respectfully request, therefore, that the rejection of claim 36 be withdrawn.

Claim Rejections – 35 U.S.C. §§ 102 and 103

Claims 19-22, 25-30, and 32-36 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent Publication No. 2002/0133247 by Smith et al. ("Smith"). Claim 23 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Smith in view of U.S. Patent No. 6,452,609 issued to Katinsky et al. ("Katinsky"). Claims 24 and 31 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Smith in view of U.S. Patent No. 7,023,488 issued to Szybiak et al. ("Szybiak"). These rejections are respectfully traversed. As set forth below, Applicant respectfully submits that each of the pending claims is patentably distinct from the cited references, individually and collectively.

I. Smith does not access content items from different media sources to compensate for download delay times.

There is often a delay time between the time that a user of a content output device requests a content item (e.g., song) and the time that a media player downloads the content item and plays it on the content output device. The media source may need a preparation time to set up a media stream and/or the media player may need to buffer the media stream before playing the requested content item. The media stream may be temporarily unavailable. Thus, an aspect of the pending claims is that content items from a **second media source** are output while waiting for a requested content item

from a **first media source** to be downloaded. The second media source is not associated with the same unacceptable delay time that is associated with the first media source.

Smith also addresses the problem of unacceptably long delays when switching between different media streams. See, e.g., paragraph [0009]. In Smith, however, one or more media streams **from the same source** (a media server) are buffered so that the media player can continue playing a first media stream while waiting for the second media stream from the media server to be buffered. See, e.g., paragraphs [0011] and [0012]. FIG. 1 of Smith illustrates the media server 102 that provides the media streams. Smith is silent as to a second source that should be accessed while waiting for the next media stream to be downloaded from the media server 102.

II. Smith does not replace a first content item from a first source with a second content item from a second source during a delay time while waiting for the next sequence of content items to be accessed from the first source.

Another aspect of the pending claims is that a user provides negative feedback to indicate, for example, that the user dislikes or wants to skip the current content item being played. Rather than stopping the output or merely continuing to play the current content item while waiting for the next sequence of content items to be provided by the first media source, the pending claims replace the current content item with a second content item accessed from a second media source. Thus, there is not a gap in the output and **the user is not required to keep listening to the current content item** (which the user indicated that she/he dislikes or wants to skip) while waiting for the next sequence of content items to be downloaded from the first media source. This concept is illustrated in Figure A below:

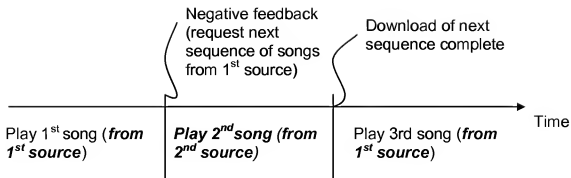


Figure A (Aspect of Pending Claims)

Smith, however, continues to play the first media stream even after sending a request for the second media stream. For example, paragraph [0047] indicates that "[d]uring the time delay between sending the request, receiving the second media stream, and playing it for the user, foreground media player 304 ***continues to play the first media stream.***" (Emphasis added). Figure B below illustrates the teachings of Smith:

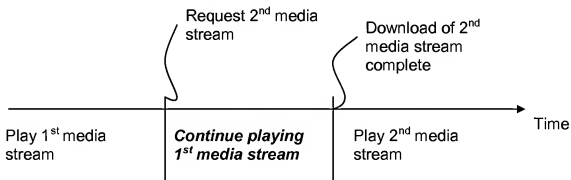


Figure B (Smith)

Figures A and B illustrate that Smith does not anticipate the pending claims because the user in Smith must continue listening to the first media stream even after requesting the second media stream. Thus, Applicants respectfully submit that Smith is

silent as to the subject matter of independent claims 19 and 28, as amended herein, and request that the rejections be withdrawn.

Conclusion

For at least the foregoing reasons, the cited prior art references, whether considered individually or in combination, fail to disclose each of the limitations in any of the pending independent claims. For at least the same reasons, each of the claims depending therefrom are also patentably distinct from the cited prior art.

In view of the foregoing, all pending claims represent patentable subject matter. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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